IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

-

**WRIT PETITION NO : 16541 of 2003**

Between:

Byragi Charandas, S/o. Late Achutharao,
Srikakulam.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by Principal Secretary,
Revenue (Endowments - IV) Department, Secretariat Builidngs, Hyderabad.
2 Regional Joint Commissioner, Endowments,
Kakinada, East Godavari District.
3 Assistant Commissioner, Endowments,
Srikakulam, Srikakulam District.
4 Sri. M. Girisham Sarma, S/o. Late Suryanaraynadas,
D.No. 7-10-23/2, Puppalavari Street, Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction calling for the records relating to the records relating to the proceedings in Memo No. 10817/E.IV(2)/2001-9 Dt. 7-7-2003 of the Government of Andhra Pradesh, Revenue (Endowments - IV ) Department issued by the 1st respondent and quash the same as illegal arbitrary and unconstitutional being violative of article 14, 21 and 300 A of the Constitution of India and also contrary to the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 and the Rules framed thereunder and also in violation of principles of natural justice.

**Counsel for the Petitioner: MR.D.V.RAMANA MURTHY**

**Counsel for the Respondent Nos.1 to 3: G.P. FOR ENDOWMENTS**
**Counsel for the Respondent No.4: MR.G.RAVI MOHAN**

**The Court made the following:**

**ORDER:**

Heard both sides.

The petitioner herein, who is a Co-Archaka along with the fourth respondent herein, files this writ petition, *inter alia*, seeking to assail the impugned order passed by the first respondent herein dated 07.07.2003 allowing the revision, at the instance of the fourth respondent, as against the orders passed by the second respondent dated 30.11.2000, whereunder the application filed by the petitioner seeking correction of the entries made by the Endowments department was ordered.

The facts in brief are that in view of the disputes arising between the petitioner and the fourth respondent, civil litigation was initiated, which ultimately ended in favour of the petitioner holding that the petitioner is a Co-Archaka along with the fourth respondent. Having regard to the Civil Court decree, the petitioner has approached the authorities for making certain corrections in the Register maintained by the Endowments department, whereby his name also has to be included along with the fourth respondent. The said application was allowed as per the orders of the Joint Commissioner, against which, the fourth respondent filed revision before the first respondent who set aside the orders of the second respondent and rejected the application filed by the petitioner only on the ground that the petitioner was convicted for a petty offence in S.T.C.No.360 of 1982 on the file of the Judicial First Class Magistrate at Srikakulam as per the judgment dated 12.01.1983 for an offence alleged to be under Section 294 of the

Indian Penal Code (IPC). Hence, this writ petition.

The learned counsel for the petitioner submits that having regard to the ultimate conclusion arrived at by the Civil Court in regard to the rights *inter se* the petitioner and the fourth respondent recognizing the petitioner's claim as a Co-Archaka in respect of the temple, there cannot be any denial of his name being entered in the Register and the reliance placed by the first respondent on the conviction of the petitioner in a criminal case is totally unsustainable.

These submissions are sought to be repelled on behalf of the respondents stating that the first respondent has rightly taken into consideration the disqualification incurred by the petitioner on account of the conviction in a criminal case. Hence, there is no warrant for interference in the orders of the first respondent.

Having considered the submissions made and also on a perusal of the material, the question which falls for consideration is as to whether the rejection of the petitioner's application for making due entries in the Register maintained by the Endowments department on the ground that he was convicted in a criminal case is sustainable?

There is no dispute to the basic facts that the petitioner as well as the fourth respondent claimed as Archakas of the temple and in view of certain disputes arising between them, a civil suit was filed in O.S.No.369 of 1978 by the fourth respondent himself on the file of the Principal District Munsif Court at Srikakulam seeking for permanent injunction. Initially, the said suit was decreed, however, on appeal, the first appellate Court as per judgment and decree in A.S.No.74 of 1982 dismissed the same. Thereupon, the petitioner has filed second appeal in S.A.No.12 of 1983 and the same was allowed as per the judgment and decree dated 18.06.1983 remanding the matter to the trial Court. Subsequently, the trial Court again decreed the suit and again on further appeal by the petitioner, the same was allowed setting aside the judgment of the trial Court. Thereafter, the judgment was confirmed by this Court in S.A.No.846 of 1985 as per the judgment dated 31.07.1989. Thereby ultimately the finding of the Civil

Court was of that the petitioner is a Co-Archaka along with the fourth respondent of the said temple. This finding has become final since no further appeal has been filed as against the same by the fourth respondent. In is only in pursuance of the said finding, the petitioner had filed an application on 25.03.2000 seeking for inclusion of his name before the third respondent herein, who refused the petitioner's request as per the orders dated 06.07.2000. Therefore the petitioner has filed a revision in R.P.No.47 of 2000 before the second respondent, who after taking into consideration the findings of the Civil Court, allowed the same holding that such entry has to be made showing the petitioner as Co-Archaka. However, against the said orders, the fourth respondent filed a further revision before the first respondent which was allowed only on the ground that the petitioner was involved in the aforesaid criminal case. On a perusal of the criminal case, it is seen that the offence alleged was only under Section 294 IPC and the allegation made against the petitioner was only that he was found singing near the temple. Ultimately, the Criminal Court has imposed a penalty of Rs.25/-. There is no serious allegation of the nature of moral turpitude against the petitioner. Further, having regard to the ultimate finding given by the competent Civil Court, the authorities ought not to have relied on any such conviction in a Criminal Court. In fact, it is the Civil Court's findings, which are more binding. Once the petitioner is recognised as a Co-Archaka, the question of denying entry in his favour in the Register maintained by the Endowments department does not arise. Further, this is not a case of any appointment being made for the first time for any post, so that any disqualification as contemplated under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 is attracted. It is only in view of the services rendered by the petitioner as well as the fourth respondent, they are being recognised as Co-Archakas and not otherwise. Therefore, the impugned orders of the first respondent in placing reliance on the aforesaid Criminal Court's conviction is wholly unsustainable.

In the circumstances, it has to be held that the mere fact that the petitioner was convicted for the offence under Section 294 IPC which in no way reflects any sort of moral turpitude, it cannot be said that he is not entitled to seek his name to be entered in the Register. It is more so, in view of the cogent findings arrived at by the Courts. Further, the scope of the enquiry in an application for making such entries is very limited. In this case, the Civil Court has already upheld the claim of the petitioner.

In the circumstances, the impugned orders of the first respondent dated 07.07.2003 are set aside and the orders of the second respondent are restored.

Accordingly, the writ petition is allowed. No costs.

13.12.2004

VGB

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, The Thirteenth Day of December, Two Thousand and Four.

To

1 The Principal Secretary, Government of Andhra Pradesh,
Revenue (Endowments - IV) Department, Secretariat Buildings, Hyderabad.
2 Regional Joint Commissioner, Endowments,
Kakinada, East Godavari District.
3 Assistant Commissioner, Endowments,
Srikakulam, Srikakulam District.

4 2CCs to the Government Pleader for Endowments, High Court Buildings,

Hyderabad (OUT)

5 2CD copies